IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA, 1928

WP(C).No. 28488 of 2004(N)

OS.791/2003 of PRL.M.C., KOTTAYAM

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PETITIONERS:

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1. T.K.KUMARAN, THEKKEVALIYAPADAM,
   THIRUVARPPU, KOTTAYAM.

2. T.K,KALYANI, OF DO. DO.

3. T.K.KARTHIANI, DO. DO. DO.

BY ADV. SRI.T.K.VENUGOPALAN
SRI.HARISH GOPINATH

RESPONDENTS:

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1. C.K.KARUNAKARAN, CHANGAMATHAYIL,
   THIRUVARPU, KOTTAYAM.

2. APPUKUTTAN, PARAKKATTIL,
   THIRUVARPPU, KOTTAYAM.

3. ACHANI, PUTHIYARICHIM VEETTIL,
   THIRUVARPU, KOTTAYAM.

4. PAPPAN, VALIYAPADATH, THIRUVARPPU KARA,
   DO. VILLAGE.

5. BALACHANDRAN, CHANGAMMATHA VEETTIL,
   THIRUVARPU, KOTTAYAM.

BY ADV. SRI.SURIN GEORGE IPE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)28488/04

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF ORDER IN I.A.1283/04 IN O.S.791/03 OF PRL MUNSIFF, KOTTAYAM DATED 13.7.04.

RESPONDENTS' EXHIBITS

EXT.R1(A): TRUE COPY OF I.A.1283/04 FILED BY THE RESPONDENTS BEFORE THE HON'BLE MUNSIFF'S COURT, KOTTAYAM IN O.S.791/03.

EXT.R1(B): TRUE COPY OF WRITTEN STATEMENT FILED BY THE RESPONDENTS BEFORE THE HON'BLE MUNSIFF'S COURT, KOTTAYAM.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.28488 OF 2004

DATED THIS THE 2nd DAY OF JANUARY, 2007

JUDGMENT

Petitioners are the plaintiffs in O.S.791/03 on the file of Munsiff Court, Kottayam. Respondents are the defendants. The suit was filed seeking a decree for injunction restraining respondents from trespassing into plaint schedule property. Summons on defendants were served on 23.12.03. They appeared before learned Munsiff on 7.1.04. As no written statement was filed, they were set exparte on 26.3.04. On 5.4.04, they filed I.A.1283/04, an application to set aside the exparte order and to permit them to file a written statement. Under Ext.P1 order, learned Munsiff allowed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. The case of petitioners was that respondents did not file a written statement before the expiry of ninety days period as provided under the Code and sufficient opportunity was not granted to petitioners to file objection to I.A.1283/04 and copy of I.A.1283/04 was given only after 24.5.04 and hence on 13.7.04 they sought time to file objection and without granting the same, learned Munsiff

allowed the application and it is to be quashed.

3. Learned Counsel appearing for petitioners and respondents were heard.

4. Defendants did not file the written statement within the period of ninety days as provided under Rule 1 of Order VIII of Code of Civil Procedure. Defendants were set exparte. I.A.1283/04 was filed to set aside the exparte order. Certified photocopy of applications filed by defendants, before the Court below, show that notice on the application was served on the Counsel appearing for petitioners on 5.4.04 itself. Even though it was contended by petitioners that sufficient opportunity to file the objections was not granted, it was pointed out by learned Counsel appearing for respondents that three adjournments were granted. Even as per ground E of the writ petition, copy of the application was received by petitioners on 24.5.04. Still no objection was filed even on 13.7.04. In such circumstances, Court below cannot be find fault for holding that no objection was filed to the application. Learned Munsiff under Ext.P1 order has only allowed defendants to contest the suit, after setting aside the exparte order. In such circumstances, I find no reason to interfere with Ext.P1 order.

Petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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